

General Information Letter: Explanation of the quarter-monthly deposit requirement for withholding.

January 3, 2006

Dear:

This is in response to your letter dated December 16, 2005, in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200

In your letter you state as follows:

This is a request for a Private Letter Ruling pursuant to the provisions of 2 Ill. Admin. Code 1200. The UNIVERSITY (University) is seeking assurance from the Illinois Department of Revenue (IDOR) that the Illinois Withholding Deposit Requirements of Section 704(b) of the Illinois Income Tax Act (35 ILCS 5/704) apply to the University in any payroll period when the cumulative withholding due exceeds \$1,000.

FACTS:

The University is a large employer with well over \$1,000 withholding tax liability for each pay date. The University maintains separate payroll schedules for two major classifications of employees. One payroll period is monthly and the other is bi-weekly. This results in three or four pay dates per each calendar month. While each pay date is considered individually when making deposits of the accumulated withholding tax due to the IDOR, the amount of accumulated withholding would exceed \$1,000 on any pay date.

For example, the University pay date of September 16, 2005 created a withholding liability in excess of \$2,000.00. The University, using the quarter-monthly rule of Section 704(b), deposited the withheld taxes on September 27, 2005. This was the third banking day after September 22, the end of the quarter-monthly period. (September 24 and 25, 2005 were Saturday and Sunday, respectively).

LAW:

35 ILCS 5/704 provides for payment of the tax withheld. Under this section, every employer who deducts and withholds tax under the Act

shall make payments as follows:

Every employer who deducts and withholds tax under this Act shall, on or before the third banking day following the close of a quarter monthly period, pay to the Department the taxes so required to be deducted and withheld, whenever the aggregate amount withheld by such employer (together with amounts previously withheld and not paid to the Department) exceeds \$1,000.

For purposes of this subsection, a quarter monthly period ends on the 7th, 15th, 22nd, and last day of each calendar month. For purposes of this section, Saturdays, Sundays, legal holidays and local bank holidays are not banking days.

Section 100.7300(c) of the Illinois Department of Revenue Regulations provides similar instructions.

Every employer required to file a quarterly return under subsection (a) above shall also file a quarter-monthly tax payment form if the amount of tax deducted and withheld during any quarter-monthly period plus the amount previously withheld and not remitted to the Department exceeds \$1,000.00. Quarter-monthly periods end on the 7th, 15th, 22nd and last day of each month.

RULING REQUESTED:

The University requests confirmation that quarter-monthly period deposit requirements as described in 35 ILCS 5/704 apply to the University including the provision for deposit of withheld taxes by the third banking day following the close of the quarter-monthly period as described in this statute. Or is there a point at which the aggregate amount withheld requires a deposit more frequently?

In the facts presented in the example above, would the deposit on September 27, 2005 represent a timely deposit for taxes withheld on the September 16, 2005 pay date?

DEPARTMENT RESPONSE:

You fail to state in your correspondence that the issue involved in this ruling request is not the subject of an ongoing audit, protest, or appeal, or litigation involving the University. The nature of your question and the information provided therefore require that we respond only with a GIL.

You have correctly identified and stated the law applicable to this question. Whenever the aggregate amount of withheld tax (including tax previously withheld and not remitted to the Department) exceeds \$1,000, quarter-monthly payments are required. Quarter-monthly payments of withheld tax are due on the third banking day following the close of a quarter-monthly period. A quarter-monthly

period ends on the 7th, 15th, 22nd, and last day of each calendar month. Weekend days, legal holidays and bank holidays do not count as banking days. 35 ILCS 5/704.

86 Ill. Adm. Code 100.7320(d) states the law regarding when returns must be filed when payment of withholding tax is due. It also contains an example that illustrates these rules in a helpful manner. Applying the law and example to the situation described in your correspondence, the amount of withholding (including amounts not previously remitted to the Department) in taxpayer's possession as of the quarter-monthly period ending September 22, 2005 exceeded \$1,000 (i.e., it was \$2,000). Because September 22, 2005 fell on a Thursday, the third banking day thereafter was Tuesday, September 27th, 2005. Saturday the 24th and Sunday the 25th, as weekend days, would not count as banking days under the law.

As to your other question, please be advised that quarter-monthly payments are the most frequent periodic dates for remitting withheld income tax. Certain taxpayers with tax liabilities exceeding statutory thresholds are, however, required to pay their tax liabilities by electronic funds transfer. 86 Ill. Adm. Code 750 sets forth the rules of the Department concerning payment of taxes by electronic funds transfer, as well as the statutory payment thresholds. 86 Ill. Admin. Code 100.7300(c).

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax